

ARKANSAS SUPREME COURT

No. CR 06-1083

NOT DESIGNATED FOR PUBLICATION

DERRICK WAYNE WALKER
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 14, 2006

PRO SE MOTIONS FOR BELATED
APPEAL AND TO WITHDRAW
MOTION FOR BELATED APPEAL
[CIRCUIT COURT OF JEFFERSON
COUNTY, CR 2003-1200, HON.
ROBERT HOLDEN WYATT, JR.,
JUDGE]

MOTION FOR BELATED APPEAL
DENIED; MOTION TO WITHDRAW
MOTION FOR BELATED APPEAL
MOOT.

PER CURIAM

A judgment and commitment order entered February 22, 2005, reflects that petitioner Derrick Wayne Walker entered negotiated pleas of guilty to robbery, fleeing and theft of property and received an aggregate sentence of 120 months' imprisonment in the Arkansas Department of Correction. On April 5, 2006, petitioner filed a petition for postconviction relief under Ark. Rule. Crim. P. 37.1, which was denied by order entered May 10, 2006. Petitioner filed notice of appeal of the order on June 19, 2006, and June 28, 2006. When the record was tendered to our clerk, he correctly declined to file it because the notice of appeal was not timely filed with the circuit clerk.

Petitioner then filed the motion for belated appeal now before us. Subsequently, petitioner moved to withdraw the motion for belated appeal. Because it is clear that petitioner could not prevail on an appeal in any case, we deny the motion for belated appeal, and the motion to withdraw

is therefore moot.

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). However, along with that right goes the responsibility to file a timely notice of appeal within thirty days of the date the order was entered in accordance with Ark. R. App. P.–Civ. 4(a). If a petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*). We note that petitioner has filed a motion to withdraw this motion, apparently so that he may gather further information to present his case for good cause. In this case, however, we do not reach the question as to whether petitioner has shown good cause. We must decline to hear petitioner’s appeal because it is clear even on the partial record before us that he cannot prevail.

This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*). Here, it is clear that petitioner could not prevail because, as the trial court correctly indicated in its order, the petition for relief under Rule 37.1 was not timely filed.

Arkansas Rule of Criminal Procedure 37.2(c) requires that a petition for postconviction relief following a guilty plea to be filed within ninety days of the date of entry of judgment. Petitioner did not file his petition for relief under Rule 37.1 until more than a year after the judgment was entered. The time limitations imposed in Ark. R. Crim. P. 37.2(c) are jurisdictional in nature. The circuit

court may not grant relief on a petition for postconviction relief which is not timely filed. *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996) (*per curiam*).

Because his petition was not timely filed, the trial court could not grant the relief requested. As petitioner cannot prevail, we must decline petitioner's request for belated appeal. The motion is accordingly denied. The motion to withdraw is moot.

Motion for belated appeal denied; motion to withdraw motion for belated appeal moot.